

**Nursing and Midwifery Council
Fitness to Practise Committee**

**Substantive Order Review Meeting
Monday 7 November 2022**

Virtual Meeting

Name of registrant: Mr Ricardo Orsen Delano Gaudoin

NMC PIN: 77F0374E

Part(s) of the register: RN1: Registered Nurse – Adult (20 February 1988)
RN3: Registered Nurse – Mental Health (3 April 1981)

Relevant Location: Kent

Type of case: Misconduct & lack of competence

Panel members: Nicola Jackson (Chair, lay member)
Sally Underwood (Registrant member)
Anne Phillimore (Lay member)

Legal Assessor: Attracta Wilson

Hearings Coordinator: Catherine Acevedo

Order being reviewed: Suspension order (12 months)

Outcome: Suspension order (12 months) to come into effect on 10 January 2023 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mr Gaudoin's registered email address on 28 September 2022. The Notice of Meeting informed Mr Gaudoin of his right to request a hearing and the time limits within which such a request should be made.

The panel noted the email correspondence from Mr Gaudoin to the NMC which stated "*I will not be attending, so please continue in my absence*". It also noted that Mr Gaudoin has not requested a hearing.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Gaudoin has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to impose a suspension order for 12 months. This order will come into effect at the end of 10 January 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 10 December 2021.

The current order is due to expire at the end of 10 January 2023.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

“That you, a registered nurse:-

- 1) *On 11 March 2016 whilst caring for Patient A*
 - (a) prepared the incorrect dose of insulin;*
 - (b) instructed an agency healthcare assistant to administer the said dose of insulin;*
 - (c) signed the incorrect medication chart;*
 - (d) signed the medication chart to indicate that you had administered the said dose of insulin when you had not done so.*
- 2) *On 23 March 2016 whilst providing care to Patient B failed to administer Midazolam to alleviate the patient’s symptoms.*
- 3) *On 31 March 2016 whilst caring for Patient C administered intravenous antibiotics by using a single use saline bag which had been used the previous day.*
- 4) *On 8 November 2016 failed to record the administration of medication to Patient D or alternatively failed to record why Patient D’s medication had not been administered.*
- 5) *On 12 November 2016 failed to complete MUST and Waterlow documentation for five patients when instructed to do so by the Ward Sister.*
- 6) *On 12 November 2016 failed to change the colostomy bag of Patient E when they requested that you do so.*

- 7) *On 24 November 2016 marked Patient F's medication chart with a "1" to indicate that his prescribed Calcium Risonium was not available when it was in his locker.*
- 8) *On 3 February 2017 you failed to record nursing interventions in the bedside folders for each of the patients in your care (save for two).*
- 9) *On 8 February 2017 you failed to ensure that two patients were prepared for discharge from the ward.*
- 10) *On 27 February 2017 applied an incorrect dressing to Patient G's leg.*
- 11) *On 27 February 2017 applied an incorrect dressing to Patient H's leg.*
- 12) *On 1 March 2017 sent Patient I to the X-ray department without their prescribed oxygen.*
- 13) *On 1 March 2017 whilst applying dressings to patients failed to prioritise:
 - (a) *calling an ambulance for a deteriorating patient; and/or*
 - (b) *preparing the necessary paperwork for the patient's transfer to an acute hospital.**
- 14) *On 1 March 2017 failed to complete a patient's care plan when instructed to do so by the Ward Sister.*
- 15) *On 2 March 2017 when a patient requested that Movicol liquid be administered with water you refused to give them water.*
- 16) *...*
- 17) *On 3 March 2017 having been notified at handover that a patient was due to be discharged that day you instructed the ward receptionist to either cancel/not book the patient's transport.*

18) *On 27 March 2017 you failed to ensure that a patient was ready for discharge from the ward.*

19) *In March 2017 you failed to meet all of the objectives set out in a Performance Improvement Plan implemented on 23 January 2017.*

20) *On 14 July 2017 in respect of Patient J you failed to:-*

(a) check the patient's blood sugar level;

(b) take any observations.

AND in light of the above, your fitness to practise is impaired by reason of your misconduct in relation to charges 1(b), 1(c), 1(d), 2, 5, 6, 7, 8, 14, 15, 16 and 17 and your lack of competence in relation to charges 1(a) 3, 4, 9, 10, 11, 12, 13, 18, 19 and 20.”

The original panel determined the following with regard to impairment:

“The panel found that limbs a, b and c were engaged in this case. It noted that Mr Gaudoin's misconduct and failure to demonstrate a satisfactory level of competency related to a number of wide ranging basic nursing skills. It was of the view that Mr Gaudoin's actions in all of the facts found proved placed patients at unwarranted risk of harm. The panel next considered if Mr Gaudoin has in the past brought and/or is liable in the future to bring the nursing profession into disrepute. It took into account Mr Gaudoin's poor practice, repeated failures, lack of kindness and compassion and was of the view that his behaviour and actions have brought the profession into disrepute. The panel next considered if Mr Gaudoin has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the nursing profession. It noted that Mr Gaudoin's failures were wide ranging and related to the basic and core skills of nursing. The panel concluded that Mr Gaudoin's actions breached fundamental tenets of the nursing profession.

The panel next considered Mr Gaudoin's level of insight and remorse. It took into account that he had made some initial admissions to the NMC in relation to two of the charges. The panel heard evidence that Mr Gaudoin demonstrated some, albeit limited insight to his colleagues at a local level. However, the panel also heard evidence that Mr Gaudoin, on occasions would deflect blame and responsibility onto others, was argumentative and defensive. Further, the panel had no evidence from Mr Gaudoin recognising the impact of him failing to meet the objectives set out in his PIP.

In addition, Mr Gaudoin appears to have withdrawn his engagement with the NMC and has indicated that he does not want to participate in any NMC proceedings. The panel had sight of correspondence between the NMC and Mr Gaudoin, which indicates that he does not accept that his nursing practice was fundamentally flawed. The panel had no evidence of meaningful reflection on his nursing practice from Mr Gaudoin. The panel also had no evidence before it from Mr Gaudoin in respect of remorse, an understanding of how his actions put patients at a risk of harm, why what he did was wrong, and how his actions impacted negatively on the reputation of the nursing profession. In addition, the panel had no evidence from Mr Gaudoin regarding how he would handle similar situations differently in the future. In light of the above, the panel was of the view that Mr Gaudoin has yet to demonstrate any meaningful insight or remorse.

The panel next considered remediation. The panel took into account the guidance as outlined in the case of Cohen. It considered whether the misconduct and lack of competence which led to the charges is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated.

The panel was satisfied that the clinical concerns identified in this case are capable of remediation through re-training. However, the panel considered that this case also relates to attitudinal issues, for example in relation to refusing a patient water, arguing with colleagues, being defensive, blaming others, and showing a lack of kindness and compassion. The panel was of the view that these concerns are difficult to remediate, specifically without demonstrating any insight or acceptance of failings. The panel heard evidence from a number of witnesses regarding concerns

about Mr Gaudoin's attitude, with some stating they had concerns about patient safety when working alongside him. Therefore the panel concluded that, whilst the concerns identified should be capable of remediation, it would require a very significant increase in the level of insight Mr Gaudoin has shown to date for this to be achieved.

The panel considered if the concerns in this case have been remediated and whether they are likely to be repeated. The panel noted that it had no evidence before it from Mr Gaudoin of remediation in regards to training or evidence that the deficiencies identified in his practice have been alleviated. Further, it appears, from the evidence before it that Mr Gaudoin has not practised as a nurse since 2017. In addition, the panel had no evidence of testimonials on behalf of Mr Gaudoin. The panel was therefore of the view that in the absence of any evidence from Mr Gaudoin in respect of remediation, it could only conclude that the deficiencies in this case have not yet been remediated.

The panel next considered whether the conduct in this case is likely to be repeated. It noted that whilst Mr Gaudoin was employed at the Trust repeated failures occurred despite the high level of support he was given. Taking into account Mr Gaudoin's lack of insight, the absence of any remediation, or any evidence of re-training, the panel concluded that the concerns identified in this case are likely to be repeated. In addition, taking into account the totality of the facts relating to misconduct, lack of competence, lack of insight and lack of remediation, the panel is of the view that there is a high risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel next considered whether a finding of impairment is necessary on public interest grounds. The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel considered whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case. The panel was of the view that an informed member of the public in receipt of the facts of the case would be appalled if a finding of impairment was not made. The panel therefore determined that a finding of impairment on public interest grounds is required.

Having regard to all of the above, the panel was satisfied that Mr Gaudoin's fitness to practise is currently impaired as a result of his misconduct and lack of competence on both public protection and public interest grounds”.

The original panel determined the following with regard to sanction:

“The panel first considered whether to take no action. The panel bore in mind that it found that Mr Gaudoin's actions were serious and amounted to misconduct and a lack of competence. It noted that it had no evidence of remediation and limited insight from Mr Gaudoin. The panel took into account that taking no action would not restrict Mr Gaudoin's practice and determined that it would be insufficient to mark the seriousness of the charges. The panel was therefore of the view that taking no action would be inappropriate in this case. In addition, to take no action would fail to address the public protection concerns and the wider public interest considerations in this case. The panel was also of the view that taking no action would undermine the public confidence in the NMC as a regulator.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the facts found proved, the misconduct and lack of competence, imposing a caution order which does not restrict Mr Gaudoin's practice would not be appropriate. Further, to impose a caution order would fail to address the public protection concerns and the wider public interest considerations in this case. The SG states that a caution order may be appropriate where ‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’ The panel considered that Mr Gaudoin's misconduct and lack of competence was

not at the lower end of the spectrum and that a caution order would be inappropriate. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Gaudoin's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular, that conditions of practice may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to retraining;*

The panel first considered if there was evidence of harmful deep-seated personality or attitudinal problems. It reminded itself of its decision in relation to impairment, in that it found Mr Gaudoin's actions demonstrated underlying attitudinal issues. Further, it was of the view that due to Mr Gaudoin's lack of insight into his conduct at this stage and the lack of evidence to show that the attitudinal issues have either been accepted or addressed, it could only conclude that it had evidence of attitudinal problems, albeit it had no evidence that these were harmful or deep-seated in nature.

The panel noted that it found various identifiable areas of Mr Gaudoin's practice which are in need of retraining. In relation to 'no evidence of general incompetence', it noted that the facts found proved in relation to lack of competence were wide ranging and therefore were indicative of general incompetence. Due to Mr Gaudoin's lack of insight and lack of meaningful engagement, the panel could not have any confidence that Mr Gaudoin would be willing to undertake training or comply with a conditions of practice order.

The panel concluded that even if it could formulate conditions to address the clinical failings, due to the factors identified above, a conditions of practice order would be inadequate to ensure public protection. Nor would it sufficiently address the seriousness of this case. In light of the above, the panel was of the view that a conditions of practice order would not be appropriate.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent (this list is not exhaustive):

- A single instance of misconduct but where a lesser sanction is not sufficient;*
- No evidence of harmful deep-seated personality or attitudinal problems;*
- The Committee is satisfied that the nurse has insight and does not pose a significant risk of repeating behaviour;*

The panel noted that this is not a single instance of misconduct as it found proved a number of charges over a significant period of time. However, the panel accepted that this was an isolated series of events in a 40 year career as a registered nurse. It also recognised that Mr Gaudoin appeared to be dealing with health issues for at least some of the time in question. It then considered evidence of harmful deep-seated personality or attitudinal problems. Whilst the panel found that Mr Gaudoin had some attitudinal problems, it had not received any evidence that led it to conclude that they were harmful or deep-seated. In addition, Mr Gaudoin has had some minor engagement with these proceedings although he does not yet fully accept his failings. The panel also reminded itself that it found the concerns to be potentially remediable but that this was dependent upon Mr Gaudoin developing a sufficient level of insight and acceptance.

When balancing the facts of Mr Gaudoin's case and the need to satisfy the public interest, the panel determined that marking Mr Gaudoin's failings by the imposition of a suspension order would be sufficient to protect the public and to satisfy the

public interest. In light of the above, the panel determined that a suspension order was the appropriate and proportionate order.

The panel did go on to consider whether a striking-off order would be necessary. The panel noted that at this time it could not strike Mr Gaudoin off the NMC Register based on his lack of competence alone. The panel determined that when taken in isolation the charges found proved which were charged as misconduct were not sufficiently serious to merit the imposition of a striking-off order. It also had regard to Mr Gaudoin's lengthy nursing career and health mitigation. The panel was satisfied that in this case, the seriousness of Mr Gaudoin's misconduct was not fundamentally incompatible with him remaining on the register. Whilst the panel acknowledges that a suspension order may have a punitive effect, it concluded that it would be unduly punitive and disproportionate in Mr Gaudoin's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel next considered the length of the suspension order. It was of the view that a 12 month suspension order was required to mark the seriousness of the case. This would also allow Mr Gaudoin sufficient opportunity to develop meaningful insight and demonstrate remediation. In addition, the panel was of the view that a 12 month suspension order was necessary to mark the public interest issues identified. The panel therefore concluded that a suspension order for a period of 12 months was appropriate and proportionate.

The panel noted the hardship such an order will inevitably cause Mr Gaudoin. However this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standards of behaviour and practice required of a registered nurse.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Mr Gaudoin's engagement with the NMC and attendance at a future review hearing;*
- A comprehensive reflective piece from Mr Gaudoin addressing the panel's findings;*
- Evidence of recent and relevant training undertaken;*
- Testimonials from any employment since the time of the incidents from either paid or unpaid work;*
- Any other information Mr Gaudoin thinks would be helpful to a reviewing panel".*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Gaudoin's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Mr Gaudoin's fitness to practise remains impaired.

Regarding Mr Gaudoin's insight, the panel noted that the original panel found that he would deflect blame and responsibility onto others and he does not accept that his nursing practice was fundamentally flawed. At this meeting the panel had received no information regarding whether Mr Gaudoin had addressed his misconduct and lack of competence or that he had reflected on his failings and developed any insight or remorse.

The panel also had no evidence before it from Mr Gaudoin that he has addressed the concerns in his practice by way of any training or evidence that the deficiencies identified in his practice have been alleviated. Further, it appears, from the evidence before it that Mr Gaudoin's registration fee had not been paid since 30 April 2017.

The panel next considered whether the conduct in this case is likely to be repeated. Taking into account the totality of the facts relating to misconduct, lack of competence, lack of insight and lack of remediation, the panel is of the view that the risk of repetition is high. In addition, the panel noted that Mr Gaudoin has indicated that he does not want to participate in these NMC proceedings. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel next considered whether a finding of impairment is necessary on public interest grounds. The panel bore in mind the overarching objectives of the NMC: to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel considered whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case. The panel was of the view that an informed member of the public in receipt of the facts of the case would be shocked if a finding of impairment was not made. The panel therefore determined that a finding of impairment on public interest grounds is required.

Having regard to all of the above, the panel was satisfied that Mr Gaudoin's fitness to practise is currently impaired as a result of his misconduct and lack of competence on both public protection and public interest grounds.

Decision and reasons on sanction

Having found Mr Gaudoin's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action. The panel bore in mind that the previous panel found that Mr Gaudoin's actions were serious, amounted to misconduct and a lack of competence and that his fitness to practice was impaired on both public protection and public interest grounds. This panel noted that it had no new evidence of remediation or the current state of insight from Mr Gaudoin. The panel took into account that taking no action would not restrict Mr Gaudoin's practice and determined that it would be insufficient to mark the seriousness of the charges. The panel was therefore of the view that taking no action would be inappropriate in this case. In addition, to take no action would fail to address the public protection concerns and the wider public interest considerations in this case. The panel was also of the view that taking no action would undermine the public confidence in the NMC as a regulator.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the facts found proved, the misconduct and lack of competence, imposing a caution order which does not restrict Mr Gaudoin's practice would not be appropriate. Further, to impose a caution order would fail to address the public protection concerns and the wider public interest considerations in this case. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Gaudoin's misconduct and lack of competence was not at the lower end of the spectrum and that a

caution order would be inappropriate. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Gaudoin's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel considered that Mr Gaudoin's actions had demonstrated possible underlying attitudinal issues and a lack of insight into his conduct. The previous panel noted that there were identifiable areas of Mr Gaudoin's practice which are in need of retraining, but due to Mr Gaudoin's lack of insight and lack of meaningful engagement, the panel could not have any confidence that Mr Gaudoin would be willing to undertake training or comply with a conditions of practice order.

The panel concluded that even if it could formulate conditions to address the clinical failings, due to the factors identified above, a conditions of practice order would be inadequate to ensure public protection. Nor would it sufficiently address the seriousness of this case. In light of the above, the panel was of the view that a conditions of practice order would not be appropriate.

The panel considered the imposition of a further period of suspension and took into account the findings and comments made by the previous panel. The previous panel found Mr Gaudoin's fitness to practice impaired on both public protection and public interest grounds. This panel has no new information in order to satisfy itself that Mr Gaudoin had remediated his fitness to practice, gained insight or taken any steps to strengthen his practice.

The panel therefore determined that a suspension order for 12 months would allow Mr Gaudoin a further period of time to remediate his practice, develop his insight and strengthen his practice.

Whilst the panel acknowledges that a suspension order may have a punitive effect, it concluded that it would not be unduly punitive and disproportionate in this case.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 12 months. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 10 January 2023 in accordance with Article 30(1)

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Mr Gaudoin's engagement with the NMC and attendance at a future review hearing;
- A comprehensive reflective piece from Mr Gaudoin addressing the panel's findings;
- Evidence of recent and relevant training undertaken;
- Testimonials from any employment since the time of the incidents from either paid or unpaid work;
- Any other information Mr Gaudoin thinks would be helpful to a reviewing panel.

This decision will be confirmed to Mr Gaudoin in writing.

That concludes this determination.